Missouri Attorney General's Opinions - 2003

Opinion	Date	Topic	Summary
15-2003	Jan 31	BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS AND LANDSCAPE ARCHITECTS. LAND SURVEYORS. RECORDER OF DEEDS.	A recorder of deeds shall accept for recordation land surveys prepared by a registered land surveyor that has either an embossed seal or a rubber stamp of the surveyor's seal.
32-2003	Jan 31	ANIMALS. MUNICIPALITIES. WILDLIFE.	Municipal animal pounds are only authorized to impound or harbor dogs and cats. Decompression is not a recommended method of euthanasia by the American Veterinary Medical Association's Panel on Euthanasia. Therefore, a municipal animal pound is not authorized to use a decompression chamber to euthanize wildlife.
37-2003	Feb 3	JUVENILE COURT. JUVENILES. SUNSHINE LAW.	All identifiable information regarding a juvenile in records of a juvenile court proceeding must be kept confidential unless the specific instances set forth in Section 211.321 are met.
51-2003	Jan 31	COMPETITIVE BIDDING. COUNTY. COUNTY COMMISSION. JAIL. SHERIFF.	Contracts subject to the provisions of Section 50.660, RSMo 2000, that are not let pursuant to those provisions are unenforceable against the county; however, the provider of the supplies, materials, or equipment has a cause of action for those obligations against the bond of the public official who acquired the supplies, materials, or equipment.
58-2003	Apr 23	PRIVACY. SECRETARY OF STATE. SUNSHINE LAW.	There is no conflict between the provisions of Chapter 355, RSMo, requiring the release of addresses of members of not-for-profit corporations and the Federal Privacy Act.
63-2003	Jan 7	FIRE PROTECTION DISTRICTS. FIRST CLASS COUNTIES.	Because the Sullivan Fire Protection District lies within Franklin County, which is a first class county with fewer than 900,000 inhabitants and borders three first class counties, and because Franklin County is a first class county without a charter form of government, which adjoins a first class county with a charter form of government with at least 900,000 inhabitants and adjoins at least four other counties, directors of that district may contemporaneously hold the position of director and hold a lucrative office or be employed by the state or a political

			subdivision thereof.
88-2003	Jan 27	INITIATIVE PETITION.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amending of Chapter 386 by modifying Section 386.887, the Consumer Clean Energy Act.
90-2003	Jan 30	APPROPRIATIONS. BOARD OF PUBLIC BUILDINGS. BONDS. GENERAL OBLIGATION BONDS.	The Missouri Constitution prohibits the Board of Public Buildings from issuing general obligation bonds without complying with the provisions of Article III, Section 37 of the Missouri Constitution, which require a vote of the people if the liability involved exceeds one million dollars. Indeed, Sections 8.500, et seq., do not purport to authorize the Board of Public Buildings to issue a general obligation bond for the liability of the state. But the Board of Public Buildings may issue bonds payable from the state's share of tobacco settlement proceeds, and from money appropriated by the General Assembly without having those bonds constitute general obligation bonds for the liability of the state and thus without making any vote of the people necessary.
93-2003	July 14	COUNTIES. FIRST CLASS COUNTIES. SPECIAL ROAD AND BRIDGE TAX.	First class counties not having a charter form of government must expend not less than 25 percent of the moneys deposited in the special road and bridge fund that accrue to that fund from cities, towns, and villages for the repair and improvement of existing roads, streets, and bridges within such cities, towns, or villages.
96-2003	Feb 14	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, for an initiative petition relating to the Consumer Clean Energy Act #2.
98-2003	Feb 14	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to the Consumer Clean Energy Act #2.
104-2003	July 17	CITY OF ST. LOUIS. RETIREMENT.	A retirement plan for the city of St. Louis may discharge its responsibilities under Section 70.795 by supplying a retiree organization with the plan's retired members' names and addresses.
107-2003	Nov 6	HANCOCK AMENDMENT. INCREASE IN TAX LEVY. LEVY. RATE OF LEVY. VOTE TO INCREASE TAX LEVY.	The 24-cent tax rate increase approved by the voters of the Special School District of St.Louis County in November 2000 should be added to the tax rate ceiling that was applicable for the date of that election to determine the District's new tax rate ceiling pursuant to Section 137.073.5(2), RSMo. Assuming that Section 137.073 had been properly applied to determine the District's tax rate ceiling to that point in time, the new tax rate ceiling calculated in that fashion would also be the District's new maximum levy permitted by Article X, Section 22(a) of the Missouri Constitution.

125-2003	June 20	INITIATIVE PETITION. INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article III of the Missouri Constitution by adding a new section relating to gambling on floating facilities on the White River in Rockaway Beach, Missouri.
126-2003	Nov 6	ELECTION LAWS. SUNSHINE LAW. VOTERS.	An election authority may not close records compiling voter registration information described in Section 115.157, RSMo Cum. Supp. 2002, in response to a newspaper's request for such records on the basis that they would be used for "commercial purposes" as that term is used in Section 115.158, RSMo 2000, or Section 115.158 as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Bill No. 511, 92nd General Assembly, First Regular Session (2003), where the newspaper has represented that it will not use the information for commercial purposes but instead will use it for fact-checking. The election authority must provide such records in CD-ROM format if so requested and if it has the capability to do so.
127-2003	July 10	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to a constitutional amendment for floating gambling facilities on the White River in Rockaway Beach, Missouri.
128-2003	July 11	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed initiative petition relating to gambling on floating facilities on the White River in Rockaway Beach, Missouri.
132-2003	Nov 6	WORKERS' COMPENSATION.	Missouri law does not prohibit an employer from agreeing to allow its employees who sustain occupational injuries or illnesses from selecting physicians of their own choice or from agreement to pay for such physicians.
136-2003	Nov 6	DEPARTMENT OF ECONOMIC DEVELOPMENT. MISSOURI DEVELOPMENT FINANCE BOARD. MISSOURI DOWNTOWN AND RURAL ECONOMIC STIMULUS ACT. TAX INCREMENT FINANCING.	The provision of the Missouri Downtown and Rural Economic Stimulus Act (MODRESA) to be codified at Section 99.960.8, RSMo, does not preclude a project that has been designated as a redevelopment project under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 et seq., RSMo 2000 (“the TIF statute”), and is receiving funding through “payments in lieu of taxes” and “economic activity taxes” under that statute, from subsequently being approved for state supplemental downtown development financing under MODRESA. Whether another provision of MODRESA would preclude such a combination of financing would depend on the circumstances.

143-2003	Nov 6	SUNSHINE LAW.	(1) A citizen's advisory committee established by a city to make recommendations concerning city policy, such as a city's municipal land use plan, is a public governmental body and, therefore, must keep a journal or minutes of its meetings, keep a record of its votes, and make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed. (2) If a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "public record" within the meaning of the Sunshine Law. (3) If the original of such a record is given to a consultant and a copy is not kept, it remains a public record, with the consultant holding the record as the public governmental body's agent; the body's custodian of records is responsible for retrieving the record in response to a request for public access to it.
148-2003	Dec 11	CANDIDACY FILING. ELECTION DISTRICTS.	The exception in Section 115.127.5, RSMo. Supp. 2003, requiring a special district or political subdivision "located" in a home rule city with more than four hundred thousand inhabitants to have an opening filing date of the fifteenth day before an election applies to any special district or political subdivision, including a school district, which has any part of its boundaries within the city limits of Kansas City, Missouri.
151-2003	Nov 25	INITIATIVE PETITION. INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to the proposed education and health care protection amendment to the Missouri Constitution (version 1).
154-2003	Nov 25	INITIATIVE PETITION. INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to the proposed education and health care protection amendment to the Missouri Constitution (version 2).
155-2003	Dec 1	INITIATIVE PETITION. INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of a statutory initiative petition relating to a proposed education and health care protection act (version 2).
157-2003	Dec 9	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed initiative petition relating to the Education and Health Care Protection Amendment (constitutional version #1).
158-2003	Dec 9	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed initiative petition relating to the Education and Health Care Protection Amendment (constitutional version #2).

159-2003	Dec 9	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 2000, regarding a proposed initiative petition relating to the Education and Health Care Protection Amendment (statutory version #2).
160-2003	Dec 9	INITIATIVE PETITION. INITIATIVE.	Review and rejection of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed initiative petition relating to the Education and Health Care Protection Amendment (constitutional version #1) on the ground that it contains 51 words, excluding articles.
161-2003	Dec 9	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed initiative petition relating to the Education and Health Care Protection Amendment (constitutional version #1).
162-2003	Dec 19	INITIATIVE PETITION. INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to the proposed education and health care protection amendment to the Missouri Constitution (version #3).
163-2003	Dec 19	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal Content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (constitutional version #2).
164-2003	Dec 23	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (statutory version #2).
167-2003	Jan 8 2004	INITIATIVE PETITION. INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (constitutional version 3).

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS AND LANDSCAPE ARCHITECTS:
LAND SURVEYORS:
RECORDER OF DEEDS:

A recorder of deeds shall accept for recordation land surveys prepared by a registered land surveyor that has either an embossed seal or a rubber stamp of the surveyor's seal.

January 31, 2003

OPINION NO. 15-2003

Honorable Ken Jacob
State Senator, District 19
Room 420-A, State Capitol Building
Jefferson City, MO 65101

Dear Senator Jacob:

You have submitted the following question to this office for response:

> Can a recorder of deeds accept for recording a map, plat or survey prepared by a registered land surveyor with anything other than an engraved embosser seal that makes indentations on the document? Specifically, does the phrase "impressed thereon, and affixed thereto, the personal seal", contained in section 327.361, RSMo., require a raised or engraved embossed seal; or does it merely require any process, such as an ink stamp, which is pressed on the document?

The provisions of Chapter 327, RSMo, are enforced by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects. Section 327.041, RSMo Supp. 2002. Pursuant to its authority in Section 327.041.2, RSMo Supp. 2002, the Board has promulgated regulations, including regulations on the use of a land surveyor's seal. 4 CSR 30-3.040 provides, in pertinent part:

> (1) Each professional land surveyor licensed prior to January 1, 2002, at his/her own expense, shall secure a seal one

and three-quarters inches (1 3/4") in diameter of the following design: the seal shall consist of two (2) concentric circles between which shall appear in Roman capital letters, the words, State of Missouri on the upper part of the seal, and either Registered Land Surveyor or Professional Land Surveyor on the lower part and within the inner circle shall appear the name of the licensee, together with his/her license number preceded by the Roman capital letters LS or PLS.

(2) Each professional land surveyor licensed on or after January 1, 2002, at his/her own expense, shall secure a seal one and three-quarters inches (1 3/4") in diameter of the following design: the seal shall consist of two (2) concentric circles between which shall appear in Roman capital letters, the words, State of Missouri on the upper part of the seal and Professional Land Surveyor on the lower part and within the inner circle shall appear the name of the licensee, together with his/her license number preceded by the Roman capital letters PLS.

(3) Rubber stamps, identical in size, design and content with the approved seals may be used by the licensee at his/her option.

(4) In addition to the personal seal or rubber stamp, the professional land surveyor shall also affix his/her signature on and through his/her seal, and place the original date under the seal, at a minimum, to the original of each sheet in a set of plats, surveys, drawings, specifications, estimates, reports and other documents or instruments which were prepared by the professional land surveyor or under the professional land surveyor's immediate personal supervision.

(A) When revisions are made, the professional land surveyor, who made the revisions or under whose immediate personal supervision the revisions were made, shall sign, seal and date each sheet and provide an explanation of the revisions.

(B) On multiple page specifications, estimates, reports and other documents or instruments, not considered to be plans,

> the professional land surveyor, when more than one (1) sheet is bound together in one (1) volume, may sign, seal and date only the title or index sheet, providing that the signed sheet clearly identifies all of the other sheets comprising the bound volume. Provided further that any of the other sheets which were prepared by, or under the immediate personal supervision of another professional land surveyor be signed, sealed and dated as provided for, by the other professional land surveyor and any additions, deletions or other revisions shall not be made unless signed, sealed and dated by the professional land surveyor who made the revisions or under whose immediate personal supervision the revisions were made.

The regulation is clear that the licensing board, which is responsible for enforcing the provisions of Chapter 327, RSMo, including Section 327.361, RSMo 2000, accepts either an embossed seal or an ink stamp pressed on the document.

In your request, you ask for an interpretation of Section 327.361.1, RSMo. That section provides:

> It shall be unlawful for the recorder of deeds of any county, or the clerk of any city or town, or the clerk or other proper officer of any school, road, drainage, or levee district or other political subdivision of this state, to file or record any map, plat or survey which has been prepared by a person other than a professional land surveyor and which does not have impressed thereon, and affixed thereto, the personal seal and signature of the professional land surveyor by whom or under whose authority and supervision the map, plat or survey was prepared.

The statutory provision regarding recorders states that a recorder can only accept for filing land surveys that have the personal seal of the surveyor "impressed" on the survey. The verb "impress" in this context is defined as "to apply with pressure." When a rubber stamp is used on a document, it is applied with pressure. In construing statutes, words should be considered in their plain and ordinary meanings. *State ex rel. M. B. v. Brown*, 532 S.W.2d 893 (Mo. Ct. App. 1976).

The interpretation of a statute by the agency responsible for implementing the statute is given great weight. *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513 (Mo. banc 1999). Moreover, the purpose of statutory construction is to ascertain the legislative intent. *State v. Wahby*, 775 S.W.2d 147 (Mo. banc 1989). It is clear from the provisions cited above that a recorder of deeds can accept for filing only a land survey that has a seal on it from a registered land surveyor. It is also apparent that the registration board, pursuant to its authority under Section 327.041.2, RSMo Supp. 2002, has authorized land surveyors to use either an embossed seal or a rubber stamp identical in size, design, and content to an embossed seal.

CONCLUSION

A recorder of deeds shall accept for recordation land surveys prepared by a registered land surveyor that has either an embossed seal or a rubber stamp of the surveyor's seal.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ANIMALS:
MUNICIPALITIES:
WILDLIFE:

Municipal animal pounds are only authorized to impound or harbor dogs and cats. Decompression is not a recommended method of euthanasia by the American Veterinary Medical Association's Panel on Euthanasia. Therefore, a municipal animal pound is not authorized to use a decompression chamber to euthanize wildlife.

OPINION NO. 32-2003

January 31, 2003

Honorable Matt Blunt
Secretary of State
State Capitol Building
201 West Capitol Avenue
Jefferson City, MO 65101

Dear Secretary Blunt:

You have asked this office whether it is legal for a municipal animal pound to use a decompression chamber to euthanize wildlife.

In order to answer your question, we first look to the statutory authority granted to municipal animal shelters. Section 273.325.2(17)[1] defines "pound" or "dog pound" as "a facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals[.]" *See also* 2 CSR 30-9.010(2)(JJ).

The provisions of Sections 273.325 to 273.357 deal with regulating privately owned kennels, breeders, dealers, and pet shops, as well as publicly owned pounds. The Department of Agriculture has adopted regulations implementing these provisions. *See* 2 CSR 30-9.010, *et seq.*

Political subdivisions have such authority as granted to them by the legislature. *Harris v. William R. Compton Bond & Mortgage Co.*, 149 S.W. 603, 609 (Mo. banc 1912).

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[1]Statutory citations are to RSMo 2000.

The authority granted municipalities under Section 273.325.2(17) is limited to "impounding or harboring seized, stray, homeless, abandoned, or unwanted animals." "Animals" are defined in Section 273.325.2(4) as "any dog or cat, which is being used, or is intended for use, for research, teaching, testing, breeding, or exhibition purposes, or as a pet." Based upon this definition of "animal," a municipal animal shelter is limited to handing dogs or cats.

"Humane euthanasia" is defined at Section 273.325.2(14) as "the act or practice of putting an animal to death in a humane or instantaneous manner under guidelines and procedures established by rules promulgated by the director [of agriculture.]" The Department of Agriculture has stated "[e]uthanasia means the act of putting an animal to death in a humane manner and shall be accomplished by a method specified as acceptable by the American Veterinary Medical Association Panel on Euthanasia[.]" 2 CSR 30-9.010(2)(V). The Department has also adopted 2 CSR 30-9.020(14)(F)5, which states "All euthanasia of animals shall be accomplished by a method approved by the 1993 edition, or later revisions, of the *American Veterinary Medical Association's Panel on Euthanasia.*"

Section 578.005(7) defines "humane killing" as "the destruction of an animal accomplished by a method approved by the American Veterinary Medical Association's Panel on Euthanasia (JAVMA 173:59-72, 1978); or more recent editions, but animals killed during the feeding of pet carnivores shall be considered humanely killed[.]" In this context, animal is defined more broadly as "every living vertebrate except a human being[.]" Section 578.005(3).

The most recent version of the Journal of the American Veterinary Medical Association's Report from the Panel on Euthanasia, Vol. 218, No. 5, dated March 1, 2001, states at page 696 that:

> Decompression is unacceptable for euthanasia because of numerous disadvantages. (1) Many chambers are designed to produce decompression at a rate 15 to 60 times faster than that recommended as optimum for animals, resulting in pain and distress attributable to expanding gases trapped in body cavities. (2) Immature animals are tolerant of hypoxia, and longer periods of decompression are required before respiration ceases. (3) Accidental recompression, with recovery of injured animals, can occur. (4) Bloating, vomiting, convulsions, urination, and

> defecation, which are aesthetically unpleasant, may occur in unconscious animals.

From the foregoing, it appears that municipal animal shelters are authorized to impound or harbor seized, stray, homeless, abandoned, or unwanted animals, with "animals" defined as "any dog or cat." *See* Sections 273.325.2(17) and 273.325.2(4). Use of decompression is not recommended by the American Veterinary Medical Association's Panel on Euthanasia. Therefore, such a method of destroying an animal in a municipal animal shelter is not allowed.

CONCLUSION

Municipal animal pounds are only authorized to impound or harbor dogs and cats. Decompression is not a recommended method of euthanasia by the American Veterinary Medical Association's Panel on Euthanasia. Therefore, a municipal animal pound is not authorized to use a decompression chamber to euthanize wildlife.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

JUVENILE COURT:
JUVENILES:
SUNSHINE LAW:

All identifiable information regarding a juvenile in records of a juvenile court proceeding must be kept confidential unless the specific instances set forth in Section 211.321 are met.

OPINION NO. 37-2003

February 3, 2003

Honorable Mike Rich
Mayor
102 South Holden Street
Warrensburg, MO 64093

Dear Mayor Rich:

You have submitted a request to this office pursuant to Section 610.027.5, RSMo,[1] for an opinion regarding the relationship between the provisions of Chapter 610, RSMo, the Sunshine Law, and those in Chapter 211, RSMo, dealing with disclosure of information regarding juveniles. In particular, you have asked how a municipality should treat requests for disclosure of arrest reports and incident reports which contain identifiable information about juveniles. The reports may involve the juveniles as the offenders or as the victims in abuse or neglect matters. To answer your request, we must analyze provisions of two different areas of the law and try to harmonize them if at all possible. *State ex rel. R. Newton McDowell, Inc. v. Smith*, 67 S.W.2d 50 (Mo. banc 1933). For purposes of this opinion, we are limiting our response to records from juvenile court proceedings.

Section 610.011, RSMo, requires that the provisions be interpreted broadly in favor of disclosure. Courts have recognized that the public policy of this state is for openness of government records if at all possible. *North Kansas City Hospital Board of Trustees v. St. Luke's Northland Hospital*, 984 S.W.2d 113 (Mo. Ct. App. 1998). Exceptions to disclosure are to be narrowly construed. *News-Press and Gazette Co. v. Cathcart*, 974 S.W.2d 576 (Mo. Ct. App. 1998).

Section 610.021 provides enumerated exceptions to disclosure. Subsection (14) provides that one of those exceptions are "[r]ecords which are protected from disclosure by law." We must look to the provisions in Chapter 211 to determine whether such an exception exists regarding the type of information about which you have inquired.

Section 211.321 provides that records of juvenile court proceedings, including information obtained and social records prepared for the court, are not open to the general public, and then enumerates a variety of exceptions to that general proposition. Exceptions to general propositions

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[1]Unless otherwise noted, all statutory references are to RSMo 2000.

in statutes must be strictly construed. *Bartley v. Special School District*, 649 S.W.2d 864 (Mo. banc 1983). We have identified six exceptions to the general proposition as set forth in subparts of Section 211.321. Those exceptions are as follows:

1) The juvenile court can order records available to "persons having a legitimate interest."

2) If the child is charged with an offense which, if committed by an adult, would be a class A felony or commits capital murder, first degree murder, or second degree murder.

3) When a pre-sentence report has to be prepared pursuant to Section 557.026, a list of certain violations that occurred as a juvenile shall be provided, with the violations limited to rape, sodomy, murder, kidnapping, robbery, arson, burglary, or any acts involving the rendering or threat of serious bodily harm.

4) A juvenile officer may provide information to the victim, witnesses, officials at the child's school, law enforcement officials, prosecuting attorneys, anyone having or proposing to have legal or actual care, custody, or control of the child; or anyone providing or proposing to provide treatment to the child.

5) Information may be provided to persons or organizations authorized to compile statistics relating to juveniles, with the juvenile court required to establish procedures to protect the confidentiality of the children's names and identities.

6) General information regarding the disposition of the case may be provided the victim or the victim's immediate family.

As stated above, the provisions in Chapter 610, RSMo, dealing with arrest records, incident reports, and investigative reports are to be interpreted in favor of disclosure. The provisions in Chapter 211, RSMo, favor protecting the identity of juveniles. Accordingly, we must try and harmonize these provisions and give meaning to both statutes. *State ex rel. Riordan v. Dierker*, 956 S.W.2d 258 (Mo. banc 1997).

When responding to a request for disclosure of a record involving a juvenile, the law enforcement agency must decide if the record itself is subject to disclosure. For instance, if the investigation is active, the investigative record is a closed record. See Section 610.100.2, RSMo 2000. On the other hand, if the record is an open record, then all identifying information regarding juveniles must be redacted, unless one of the aforementioned exceptions of Section 211.321 is met. Once all the identifying information is redacted, the provisions of Chapter 211, RSMo, no longer prohibit the release of the report. Such identifying information would not just be names, but, in some instances, may include addresses, phone numbers, license plate numbers, physical descriptions,

make and model of cars, names of family members, and other similar attributes. It must be remembered that one of the purposes of Section 610.100 is to keep police accountable by imposing record keeping and reporting obligations.

The legislature has delineated with specificity the occasions when juvenile court proceedings and records prepared for the court can be made available and to whom. The primary purpose of statutory construction is to effectuate the legislature's intent. *U.S. v. N. E. Rosenblum Truck Lines*, 315 U.S. 50 (1942). The legislature intended to protect the confidentiality of juveniles who appeared before the juvenile court. The legislature also recognized in enacting the Sunshine Law that other provisions of law may prevent disclosure of some information. Section 610.021(14).

When the juvenile court is involved, records that identify the juvenile generally are not subject to disclosure. This is particularly true when the court is protecting the juvenile, such as in the proceedings to protect the child from neglectful or abusive parents or guardians set forth in Section 211.031.1(1)(a) and (b). Therefore, to the extent that your question deals with the access to records involving juveniles in juvenile court proceedings, all identifiable information regarding the juvenile must be kept confidential, except to the extent described earlier in this opinion.

CONCLUSION

All identifiable information regarding a juvenile in records of a juvenile court proceeding must be kept confidential unless the specific instances set forth in Section 211.321 are met.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

COMPETITIVE BIDDING:
COUNTY:
COUNTY COMMISSION:
JAIL:
SHERIFF:

Contracts subject to the provisions of Section 50.660, RSMo 2000, that are not let pursuant to those provisions are unenforceable against the county; however, the provider of the supplies, materials, or equipment has a cause of action for those obligations against the bond of the public official who acquired the supplies, materials, or equipment.

OPINION NO. 51-2003

January 31, 2003

Honorable Paul Boyd
Scott County Prosecuting Attorney
P.O. Box 160
Benton, MO 63736

Dear Mr. Boyd:

Your predecessor submitted a request for an opinion from this office regarding the obligations of a county commission to pay for the replacement of a heating/cooling unit at the Scott County jail wherein questions were raised whether the bidding procedures were followed. In a phone call with your office, you renewed the request. Based upon the information you have submitted, it appears the unit at the county jail was replaced at a cost that exceeded $4,500.

In your request, you ask whether the commission would violate Section 49.490, RSMo, if it pays the bill, as well as related questions regarding who otherwise would be responsible for paying the bill. As an initial matter, Section 49.490, RSMo, is inapplicable in this instance. That statute involves civil responsibility for damaging county property and is in no way applicable herein.

Section 50.660, RSMo 2000, governs the award of county contracts. It provides in pertinent part:

> All contracts shall be executed in the name of the county, . . . by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment or

> services other than personal made by the officer in charge of purchasing in any county . . . having the officer. No contract or order imposing any financial obligation on the county . . . is binding on the county . . . unless it is in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which it is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation incurred and unless the contract or order bears the certification of the accounting officer so stating; except that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it is sufficient for the accounting officer to certify that the bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county . . . with a circulation of at least five hundred copies per issue, if there is one, except that the advertising is not required in case of contracts or purchases involving an expenditure of less than four thousand five hundred dollars. It is not necessary to obtain bids on any purchase in the amount of four thousand five hundred dollars or less made from any one person, firm or corporation during any period of ninety days. All bids for any contract or purchase may be rejected and new bids advertised for. . . .

Under the terms of this statutory provision, counties are obligated to use competitive bidding procedures for contracts in excess of $4,500. There was apparently no advertisement in a newspaper in the county for bids as mandated by the statute. The bids are to be obtained "by the head of the department or officer concerned," unless the county has a purchasing officer. There is nothing in your submittal to indicate that Scott County has a purchasing officer.

Information received from the sheriff indicates that he obtained two bids for the repair work and that he considered the situation to be an "emergency." He states that had he not taken the action of getting the repairs done quickly, the prisoners would have to have been moved to another facility at a greater expense to the county than the cost to repair the unit. We have been unable to find any provision exempting from the bidding requirements for an "emergency." We do recognize that there may be life-threatening situations in which repairs must be undertaken outside the bidding process. However, there is nothing in what has been submitted that indicates the repairs were undertaken because of life-threatening situations.

Sheriffs have the "custody, rule, keeping and charge of the jail within his county." Section 221.020, RSMo 2000. The responsibility of the care of prisoners is on the sheriff. *Jones v. Houser*, 489 F.Supp. 795 (E.D. Mo. 1980). In fact, the sheriff is liable for jail conditions even though he may not be aware of them. *Tatum v. Houser*, 642 F.2d 253 (8th Cir. 1981).

The determination to require all contracts in excess of $4,500 be let by competitive bidding is the declaration of public policy that such bidding is required. *Layne-Western Co. v. Buchanan County*, 85 F.2d 343, 347 (8th Cir. 1936). There is an obligation on contractors to ensure that counties comply with the bidding requirements. *Jablonsky v. Callaway County*, 865 S.W.2d 698 (Mo.App. 1993). In fact, counties can assert noncompliance with the bidding procedures to avoid obligations under contracts let without following those procedures. *Traub v. Buchanan County*, 108 S.W.2d 340 (Mo. 1937). See also *Carter-Waters Corporation v. Buchanan County*, 129 S.W.2d 914 (Mo. 1939) wherein the court held that a contractor who provided road materials to a county without complying with the county budget law had no cause of action against the county.

Even though the sheriff is in charge of the jail, he cannot bind the county when the competitive bidding procedures are not followed. *Allen v. Butler County*, 743 S.W.2d 527 (Mo.App. 1987). In *Allen*, the court found that the provisions in Section 50.660 are mandatory and that all people dealing with counties are on notice of these requirements. *Allen* at 528-29.

The purpose of statutory construction is to implement the legislature's intent. *Habjan v. Earnest*, 2 S.W.3d 875 (Mo.App. 1999). The plain and ordinary meaning of words are to be applied in ascertaining that intent. *Pierce v. Department of Social Services*, 969 S.W.2d 814 (Mo.App. 1998). The plain words of Section 50.660, RSMo, require that all contracts over $4,500 must be let to the lowest and best bidder after advertisement in a newspaper with a circulation of at least 500.

Having established that the county has no obligation to pay for the work performed outside the provisions of Section 50.660, we turn to your question whether the contractor has recourse. This office addressed this issue in Opinion No. 19, December 7, 1955, a copy of which is attached. In that opinion, we concluded that a county court (now county commission) cannot pay for services for which it was not legally obligated to pay, but that the officer (the sheriff herein) would be obligated on his bond under Section 50.650, RSMo 1949. That statutory provision relied upon in the 1955 opinion still exists at Section 50.650, RSMo 2000. Therefore, under the facts as stated in your request, the county commission could not make payment on the repairs and the contractor could recover its contract price from the sheriff's bond.

CONCLUSION

Contracts subject to the provisions of Section 50.660, RSMo 2000, that are not let pursuant to those provisions are unenforceable against the county; however, the provider of the supplies, materials, or equipment has a cause of action for those obligations against the bond of the public official who acquired the supplies, materials, or equipment.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

attachment

PRIVACY:
SECRETARY OF STATE:
SUNSHINE LAW:

There is no conflict between the provisions of Chapter 355, RSMo, requiring the release of addresses of members of not-for-profit corporations and the Federal Privacy Act.

OPINION NO. 58-2003

April 23, 2003

Honorable John T. Russell
State Senator, District 33
Room 416, State Capitol Building
Jefferson City, MO 65101

Dear Senator Russell:

You have submitted a question to this office whether there is a conflict between provisions of Chapter 355, RSMo, requiring the release of addresses of members of a not-for-profit corporation and the "Federal Privacy Act." We assume for purposes of this opinion that your reference is to 5 U.S.C. §§ 552a, *et seq.*, which has as its popular name the Federal Privacy Act.[1]

There are several provisions in Chapter 355 that require addresses of members of not-for-profit corporations be available upon request. *See, e.g.,* Sections 355.271, 355.821, and 355.826, RSMo. A review of those provisions illustrates that there has been a legislative determination that such addresses be available upon request.

There is little doubt that 5 U.S.C. §§ 552a, *et seq.* does not apply to not-for-profit corporations because such corporations are not "agencies." Agency is defined as "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." See 5 U.S.C. § 552(f)(1). Even if the provisions do apply to such corporations, there are conditions which allow disclosure. 5 U.S.C. § 552a(b) provides:

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[1]We have studied other provisions in other federal statutes and conclude they have no applicability to your inquiry. *See, e.g.*, 42 U.S.C. § 2000aa-2000aa-12.

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains unless disclosure of the record would be . . . .
>
> (3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section

5 U.S.C. § 552a(a)(7) defines "routine use" as "means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. § 552a(e)(4)(D) requires federal agencies to publish in the Federal Register what it considers routine use and the purposes of such use. Because your question applies to not-for-profit corporations, this section of federal law is inapplicable.

A review of the provisions of Chapter 355 shows that the purpose of the collection of the names and addresses was to provide it when requested. The information that would be disclosed was collected for purposes of dissemination when requested and, therefore, such disclosure would be for a "routine" use.

The type of information that is the subject of your inquiry does fall within the definition of a record. "Record" is defined at 5 U.S.C. § 552a(a)(4) as

> [M]eans any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual[.]

The question before us is whether the names and addresses of members of not-for-profit corporations can be disclosed. The statute insists that the addresses be released in order that members can communicate prior to the annual meeting (Section 355.271.2) and to allow members to see who else are members (Sections 355.821 and 355.826). The determination has been made that the public policy of this state dictates that these records shall be available for disclosure as provided in Chapter 355.

CONCLUSION

There is no conflict between the provisions of Chapter 355, RSMo, requiring the release of addresses of members of not-for-profit corporations and the Federal Privacy Act.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

FIRE PROTECTION DISTRICT:
FIRST CLASS COUNTIES:

Because the Sullivan Fire Protection District lies within Franklin County, which is a first class county with fewer than 900,000 inhabitants and borders three first class counties, and because Franklin County is a first class county without a charter form of government, which adjoins a first class county with a charter form of government with at least 900,000 inhabitants and adjoins at least four other counties, directors of that district may contemporaneously hold the position of director and hold a lucrative office or be employed by the state or a political subdivision thereof.

January 7, 2003

OPINION NO. 63-2003

Honorable Jim Froelker
State Representative, District 111
State Capitol Building, Room 109B
Jefferson City, MO 65101-6806

Dear Representative Froelker:

You have submitted a request for an opinion from this office whether a member of the board of directors of the Sullivan Fire Protection District may hold any lucrative office or employment under this state or any political subdivision of this state while serving as a member of the board of directors of that fire protection district. In the information you submitted, you have stated that the Sullivan Fire Protection District includes portions of Franklin, Washington, and Crawford Counties, that none of those counties have a charter form of government, and that none have a population in excess of 900,000 inhabitants.

Section 321.015, RSMo 2000, provides that "[n]o person holding any lucrative office or employment under this state, or any political subdivision thereof . . . shall hold the office of fire protection district director. . . ." Thereafter, there are several exceptions to this prohibition, the pertinent ones being that the section does not apply

> [T]o any county of the first or second class not having more than nine hundred thousand inhabitants which borders any three first class counties; nor shall this section apply to any first class county without a charter form of government which adjoins both

> a first class county with a charter form of government with at least nine hundred thousand inhabitants, and adjoins at least four other counties.

Franklin County qualifies under the first quoted exception in that it is a county of the first class with fewer than 900,000 inhabitants that borders three first class counties, Jefferson County, St. Louis County, and St. Charles County. Franklin County also qualifies under the second quoted exception in that it is a first class county without a charter form of government which adjoins a first class county with a charter form of government with at least 900,000 inhabitants (St. Louis County) and adjoins at least four counties, the three previously mentioned, plus Warren, Gasconade, Crawford, and Washington.

The purpose of statutory construction is to ascertain the legislature's intent. *Budding v. SSM Healthcare Sys.*, 19 S.W.3d 678 (Mo. banc 2000). The words should be considered in their plain and ordinary meaning. *State ex rel. Div. of Child Support Enforcement v. Gosney*, 928 S.W.2d 892 (Mo. Ct. App. 1996).

Section 321.015 states a general prohibition that directors of fire protection districts cannot contemporaneously hold offices or employment by the state or its political subdivisions. It then lists a series of exceptions to that general proposition. Exceptions to general propositions are to be narrowly construed. *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15 (Mo. banc 1995). However, the exceptions referenced above are clear and remove members of the board of directors of such fire protection districts from the prohibition of holding offices or employment from the state or other political subdivisions. When the language is clear and unambiguous, there is no room for a contrary construction. *Brownstein v. Rhomberg-Haglin & Assoc., Inc.*, 824 S.W.2d 13 (Mo. banc 1992). Accordingly, a director of the Sullivan Fire Protection District is not prohibited from holding a lucrative office or employment with the state or a political subdivision.

CONCLUSION

Because the Sullivan Fire Protection District lies within Franklin County, which is a first class county with fewer than 900,000 inhabitants and borders three first class counties, and because Franklin County is a first class county without a charter form of government, which adjoins a first class county with a charter form of government with at least 900,000 inhabitants and adjoins at least four other counties, directors of that district may contemporaneously hold the position of director and hold a lucrative office or be employed by the state or a political subdivision thereof.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 27, 2003

OPINION LETTER NO. 88-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to amending Chapter 386 by modifying Section 386.887, the Consumer Clean Energy Act. A copy of the initiative petition that you submitted to this office on January 17, 2003, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

APPROPRIATIONS:
BOARD OF PUBLIC BUILDINGS:
BONDS:
GENERAL OBLIGATION BONDS:

The Missouri Constitution prohibits the Board of Public Buildings from issuing general obligation bonds without complying with the provisions of Article III, Section 37 of the Missouri Constitution, which require a vote of the people if the liability involved exceeds one million dollars. Indeed, Sections 8.500, *et seq.*, do not purport to authorize the Board of Public Buildings to issue a general obligation bond for the liability of the state. But, the Board of Public Buildings may issue bonds payable from the state's share of tobacco settlement proceeds, and from money appropriated by the General Assembly, without having those bonds constitute general obligation bonds for the liability of the state and thus without making any vote of the people necessary.

OPINION 90-2003

January 30, 2003

Honorable Catherine L. Hanaway
Speaker of the Missouri House of Representatives
Room 308, State Capitol Building
201 West Capitol Avenue
Jefferson City, MO 65101

Honorable Peter D. Kinder
President Pro Tem of the Missouri Senate
Room 326, State Capitol Building
201 West Capitol Avenue
Jefferson City, MO 65101

Dear Speaker Hanaway and President Pro Tem Kinder:

You have asked for this office's opinion on the following questions:

> Are the bonds to be issued, as contemplated by the Governor's hybrid tobacco securitization plan, general obligation bonds; and, does the Board of Public Buildings have authority to issue general obligation bonds on behalf of the State of Missouri without a vote of the people of the state?

In your request, you noted the enactment on June 7, 2002, of Senate Bill 1191, which has been codified at Sections 8.500, *et seq.* of the Missouri Revised Statutes.[1] That legislation created the Tobacco Settlement Financing Authority and authorized the Authority or the Board of Public Buildings to enter into certain transactions for the purpose of securitizing a portion of the state's share of tobacco litigation settlement proceeds. Your request also states, without citation or explanation, that "[t]he Governor has since requested that the General Assembly pass a special, supplemental appropriation in 2003 for tobacco securitization to authorize the Board of Public Buildings to sell bonds backed by the full faith and credit of the State of Missouri, commonly referred to as hybrid securitization."

The details of our analysis are set out below but, in brief, the Missouri Constitution prohibits the legislature from authorizing the issuance of general obligation bonds for the liability of the state without complying with the provisions of Article III, Section 37 of the Missouri Constitution, which require a vote of the people if the liability involved exceeds one million dollars. Nothing in Senate Bill 1191 contradicts that fundamental premise of Missouri law. But Senate Bill 1191 permits, and nothing in the Missouri Constitution prohibits, the Board of Public Buildings to issue bonds for tobacco securitization. That is because Senate Bill 1191 authorizes the Board of Public Buildings to issue bonds payable from the state's share of tobacco settlement proceeds, and from money appropriated by the General Assembly. Such bonds would not constitute general obligation bonds for the liability of the state and therefore no vote of the people would be necessary.

As indicated above, your questions raise the issue of the application of Article III, Section 37 of the Missouri Constitution to tobacco securitization. Article III, Section 37 provides:

> The general assembly shall have no power to contract or authorize the contracting of any liability of the state, or to issue bonds therefor, except (1) to refund outstanding bonds, the refunding bonds to mature not more than twenty-five years from date, (2) on the recommendation of the governor, for a temporary liability to be incurred by reason of unforeseen emergency or casual deficiency in revenue, in a sum not to exceed one million dollars for any one year and to be paid in not more that five years from its creation, and (3) when the liability exceeds one million dollars, the general assembly as on constitutional amendments, or the people by the initiative, may also submit a measure containing the amount, purpose and terms of the liability, and if the measure is approved by a majority of the qualified electors of the state voting thereon at the election, the

[1]All statutory references are to the 2002 Cumulative Supplement of the Missouri Revised Statutes.

> liability may be incurred, and the bonds issued therefor must be retired serially and by installments within a period not exceeding twenty-five years from their date. Before any bonds are issued under this section the general assembly shall make adequate provision for the payment of the principal and interest, and may provide an annual tax on all taxable property in an amount sufficient for the purpose.

This provision clearly prohibits the General Assembly from authorizing the Board of Public Buildings to issue general obligation bonds for the liability of the state in excess of one million dollars unless the transaction was approved by a vote of the people in the manner that the provision describes.

It is evident that the General Assembly took Article III, Section 37 into account in enacting Senate Bill 1191. In addition to authorizing the Tobacco Settlement Financing Authority to issue bonds, that legislation also authorized the Board of Public Buildings to do so. Section 8.570. But the legislation makes clear that such bonds issued by the Board of Public Buildings must be paid from certain specified funds instead of being backed by the liability of the state. Specifically, Section 8.570 provides:

> The board of public buildings may issue bonds payable from not more than thirty percent of the state's share; provided, and the maximum amount of the state's share sold by the authority pursuant to section 8.535 and by the board of public buildings pursuant to this section shall collectively not exceed thirty percent of the state's share. The proceeds from bonds issued by the board of public buildings under this section may be deposited directly to the general revenue fund or deposited to the "Tobacco Bond Proceeds Fund" hereby created and then transferred to the general revenue fund. Repayment of any bonds issued pursuant to this section may be made *solely from such portion of the state's share, an appropriation specifically authorized for such purpose or from any appropriation from the state's share for any other purpose.*

(Emphasis added.)

Furthermore, Section 8.572 specifies:

> Any bonds issued by the board of public buildings pursuant to sections 8.570 to 8.590 *shall not be deemed to be an indebtedness of the state of Missouri* or of the board of public buildings, or of the

> individual members of the board of public buildings, and *shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation* upon the incurring of indebtedness.

(Emphasis added.)

As its terms indicate, Senate Bill 1191 plainly authorizes the Board of Public Buildings to issue bonds for the purpose of tobacco securitization without having those bonds constitute general obligation bonds for the liability of the state, and thus without implicating the provisions of Article III, Section 37. Issuing bonds that are to be paid from a particular source of funds, including funds appropriated for that purpose, does not create a contract or bond for the liability of the state. *Board of Public Buildings v. Crowe*, 363 S.W.2d 598, 604-605 (Mo. banc 1962) (transaction did not constitute issuance of bonds for "liability of the state" where there was no obligation to satisfy a debt through general taxation, the payment of the bonds was contingent on the appropriation by the legislature of moneys that would be used to pay the bonds).[2]

Indeed, as the case law cited above suggests and as other transactions commonly reflect,[3] a state entity can issue bonds that are to be paid from funds appropriated for that purpose and the payment of the bonds in each year of their term is contingent on the legislature's appropriating funds for each year's payment. Such transactions can also involve an agreement by a state official annually to seek an appropriation from the General Assembly for the purpose of making each bond payment that comes due. Such an obligation to request an appropriation does not implicate Article III, Section 37 because requesting an appropriation does not incur any obligation to pay money, through taxation or otherwise. *See Crowe*, 363 S.W.2d at 604-05.

Accordingly, among other permissible structures for tobacco securitization, the Board of Public Buildings could issue bonds pursuant to the authority granted by the legislature in Section 8.570. Those bonds could be paid from the state's share of the tobacco litigation settlement and, in the event that those funds were not sufficient to pay the bonds in a given year, from an appropriation

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[2]*See also State ex rel. Farmer's Elec. Coop., Inc. v. State Envtl. Improvement Auth.*, 518 S.W. 2d 68, 75 (no state liability within meaning of Article III, Section 37 where statute authorizing bonds stated that state would not be liable).

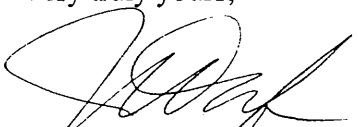
[3]*See, e.g.*, Project Agreement, Sections 1.3 and 4.2, Cooperative Agreement, Article II, and Opinions of Counsel contained in closing documents for Agreements Concerning the Design, Construction and Financing of a Multi-Purpose Convention, Exhibition and Sports Facility (the "Project") Adjoining the A.J. Cervantes Convention Center (the "Convention Center") and Operation of the Convention Center and the Project.

of other funds made by the legislature for the purpose of making that year's payment, such as funds appropriated in a supplemental appropriation this year. The transaction could include an agreement by an appropriate state official to request annually an appropriation for that purpose, but payment to make up for any shortfall in funds from the state's share from year to year would remain contingent on such an appropriation in fact being made.

CONCLUSION

The Missouri Constitution prohibits the Board of Public Buildings from issuing general obligation bonds without complying with the provisions of Article III, Section 37 of the Missouri Constitution, which require a vote of the people if the liability involved exceeds one million dollars. Indeed, Sections 8.500, *et seq.*, do not purport to authorize the Board of Public Buildings to issue a general obligation bond for the liability of the state. But, the Board of Public Buildings may issue bonds payable from the state's share of tobacco settlement proceeds, and from money appropriated by the General Assembly, without having those bonds constitute general obligation bonds for the liability of the state and thus without making any vote of the people necessary.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

COUNTIES:
FIRST CLASS COUNTIES:
SPECIAL ROAD AND BRIDGE TAX:

First class counties not having a charter form of government must expend not less than 25 percent of the moneys deposited in the special road and bridge fund that accrue to that fund from cities, towns, and villages for the repair and improvement of existing roads, streets, and bridges within such cities, towns, or villages.

OPINION NO. 93-2003

July 14, 2003

Honorable William Tackett
Cole County Prosecuting Attorney
311 East High Street
Jefferson City, MO 65101

Honorable H. Morley Swingle
Cape Girardeau County Prosecuting Attorney
100 Court Street
Jackson, MO 63755

Dear Messrs. Tackett and Swingle:

You have submitted a question to this office regarding the applicability of Article X, Section 12(a) of the Missouri Constitution to road and bridge taxes collected by first class counties. The question is: "Whether first class counties are required to distribute 'not less than twenty-five percent' of county road and bridge taxes collected to incorporated cities located within that county for repair and improvement of existing city streets and bridges."

Article X, Section 12(a) provides in pertinent part:

> In addition to the rates authorized in section 11 for county purposes, the county court . . . may levy an additional tax, not exceeding fifty cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes; provided that, before any such county may increase its tax levy for road and bridge purposes above thirty-five cents it must submit such increase to the qualified voters of that county at a general or special election and receive the approval of a majority of the voters voting on such increase. In addition to the above levy for road and bridge purposes, it shall be the duty of the county court, when so authorized by a majority of the qualified

> electors of any road district, general or special, voting thereon at an election held for such purpose, to make an additional levy of not to exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property within such district, to be collected in the same manner as state and county taxes, and placed to the credit of the road district authorizing such levy, such election to be called and held in the manner provided by law provided that the general assembly may require by law that the rates authorized herein may be reduced.

From the information you have submitted, both Cole and Cape Girardeau Counties collect the 35 cents but have not enacted the additional 15 cents tax available under that constitutional provision.

Section 137.555, RSMo 2000, is the enabling statute for the constitutional provision. Section 137.555 provides that the first 35 cents of the road and bridge tax shall be "collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever[.]"

There are also provisions applicable to taxes collected within special road districts. Four-fifths of such taxes collected within a special road district is to be credited to that special road district and paid to that district upon receipt of warrants from the district. Although these provisions are not directly related to the question you have posed, the effect of these provisions, when coupled with the analysis below, aids in addressing your question.

Section 137.556.1, RSMo 2000, provides:

> 1. Notwithstanding the provisions of section 137.555, any county of the second class which now has or may hereafter have more than one hundred thousand inhabitants, and any county of the first class not having a charter form of government, shall expend not less than twenty-five percent of the moneys accruing to it from the county's special road and bridge tax levied upon property situated within the limits of any city, town or village within the county for the repair and improvement of existing roads, streets and bridges within the city, town or village from which such moneys accrued.

The issue raised by your inquiry is whether the reference in Section 137.556.1 to the "county's special road and bridge tax" is to the first 35 cents authorized in the Constitution or to the next 15 cents which must be adopted by a vote in an election. A review of the constitutional

provision reveals that the word "special" does not appear before the phrase "road and bridge" within that provision.

The purpose of statutory construction is to ascertain and give effect to the intent of the legislature. *State v. Withrow*, 8 S.W.3d 75 (Mo. banc 1999). In construing a statute, words are to be given their plain and ordinary meaning. *Budding v. SSM Healthcare Sys.*, 19 S.W.3d 678 (Mo. banc 2000). Statutes relating to the same subject are to be interpreted to be consistent with each other. *State ex rel. Central Surety Ins. Corp. v. State Tax Comm'n*, 153 S.W.2d 43 (Mo. 1941). In fact, courts take into consideration statutes involving similar or related subject matter when those statutes shed light on the meaning of the statute being construed. *State v. Knapp*, 843 S.W.2d 345 (Mo. banc 1992).

As stated above, there is no reference to the tax as a "special" tax in the constitutional provision; therefore, the answer to your inquiry turns on whether the use of the word "special" in Section 137.556 means "unusual," and, if it does, whether the "unusual" tax is that additional tax which can only be adopted by a vote of the people.

Section 137.556 is not the only provision that utilizes the word "special" before the phrase "road and bridge" in reference to these taxes. As shown above, Section 137.555 requires that the additional tax for roads and bridges be maintained in "The Special Road and Bridge Fund." We note that the first 35 cents is collected pursuant to the constitutional provision and is maintained in a fund designated as the "special" road and bridge fund. This fund is "special" because it is to be collected and used only for roads and bridges. It is "special" because it is beyond that which counties can tax for other county purposes.

"Special" is defined as "[r]elating to or designating a species, kind, individual, thing, or sort; designed for a particular purpose; confined to a particular purpose, object, person, or class. Unusual, extraordinary." Black's Law Dictionary 1397 (6th ed. 1990). In the statutory context, the road and bridge tax is "special" because it relates to a particular purpose, to wit, the building and maintenance of roads and bridges.

In *Parkville Benefit Assessment Special Rd. Dist. v. Platte County*, 906 S.W.2d 766 (Mo. Ct. App. 1995), the court considered the statutory provisions dividing moneys collected pursuant to Article X, Section 12(a) between counties and special road districts. The court concluded that all the tax collected by the counties for roads and bridges are subject to the statutory provisions of Sections 137.555 and 137.556. *See Parkville* at 769.

The decision in *Parkville* is helpful in understanding the effect of the statutory provisions. The court states:

> Though section 137.555 provides the authority to levy the special road and bridge tax, section 137.556.1 seeks to assure that funds collected from assessments on property within a city, town, or village are spent on the roads of that city, town, or village that the taxpayers are likely to utilize.

Parkville at 770.

Because there are roads and bridges within cities that are also within counties, it makes perfect sense that a percentage of the taxes raised in such cities be expended in such cities. The reference to the road and bridge tax as "special" is because it is designed for a particular purpose. Therefore, the provisions in Section 137.556 mandate that 25 percent of the moneys accruing in a city, town, or village must be expended for repair and improvement in that city, town, or village.

CONCLUSION

First class counties not having a charter form of government must expend not less than 25 percent of the moneys deposited in the special road and bridge fund that accrue to that fund from cities, towns, and villages for the repair and improvement of existing roads, streets, and bridges within such cities, towns, or villages.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

February 14, 2003

OPINION LETTER NO. 96-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

On February 6, 2003, you submitted to us a summary statement for the initiative petition submitted by Larry Rice relating to the Consumer Clean Energy Act #2. The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

> Shall the Missouri Clean Energy Act (Section 386.887, RSMo), be amended to require the Missouri Public Service Commission, not the public utility, to set the rates for the sale of excess electricity generated by a customer back to the public utility; require a public utility to pay such a customer any credits owed but unused; require the Missouri Public Service Commission to establish equipment standards and requirements; and require the public utility, not the customer, to pay all expenses for installing the measuring equipment and controls, as well as any additional expenses?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

February 14, 2003

OPINION LETTER NO. 98-2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated February 10, 2003, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to the Consumer Clean Energy Act #2. The fiscal note summary which you submitted is as follows:

> There appears to be no direct fiscal impact on state and local governments. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

CITY OF ST. LOUIS:
RETIREMENT:

A retirement plan for the city of St. Louis may discharge its responsibilities under Section 70.795 by supplying a retiree organization with the plan's retired members' names and addresses.

OPINION NO. 104-2003

July 17, 2003

Honorable Fred Kratky
Representative, District 65
State Capitol, Room 101-G
201 West Capitol Avenue
Jefferson City, MO 65101-6806

Dear Representative Kratky:

You have submitted a question to this office whether the city of St. Louis is obligated to disclose to the Retired Employees City of St. Louis (R.E.C.S.L.) the names and addresses of retirees of the city. In your submittal, you reference a provision of House Substitute for Senate Committee Substitute for Senate Bill No. 290 passed in 2001. The provision you reference has been codified at Section 70.795, RSMo Supp. 2002, and provides:

> Notwithstanding the provisions of sections 610.010 to 610.035, RSMo, to the contrary, any retirement plan as defined in section 105.660, RSMo, located in a city not within a county, providing retirement benefits for general employees shall provide, upon request by any retiree organization, sufficient information enabling such organization to contact retired members.

The first rule of statutory construction is to implement the intent of the legislature. *State v. Burnau*, 642 S.W.2d 621 (Mo. banc 1982). In such construction, words are to be given their plain and ordinary meaning. *Hovis v. Daves*, 14 S.W.3d 593 (Mo. banc 2000).

The statute applies to retirement plans for retirees from the city of St. Louis, because it applies to a "city not within a county" which is what the city of St. Louis is. The retirement plan must provide to any retiree organization "sufficient information enabling such organization to contact retired members." For purposes of this opinion, we assume that R.E.C.S.L. is a retiree organization as contemplated in the statutory framework.

The language of Section 70.795 is explicit in its mandate that the retiree organization be able to request and receive "sufficient information enabling such organization ***to contact*** retired members" (emphasis added). By its plain terms, Section 70.795 makes it clear that the retirement plan must provide the retiree organization with enough information so that the retiree organization can initiate communication with the retired members. By contrast, the statute does not envision a system where the retirement plan provides information to its retired members to enable them to initiate communication with the retiree organization.

For the retiree organization to be able to contact the plan's retired members, the plan must provide the organization with "sufficient information" so that the organization can specifically identify those members and communicate with them. Information provided by the retirement plan would be "insufficient" if it did not enable the retiree organization to initiate communication with the plan's retired members. In our view, by providing the retiree organization with the members' names and addresses, the retirement plan will have discharged its obligations under Section 70.795 to provide "sufficient information."

CONCLUSION

A retirement plan for the city of St. Louis may discharge its responsibilities under Section 70.795 by supplying a retiree organization with the plan's retired members' names and addresses.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

HANCOCK AMENDMENT:
INCREASE IN TAX LEVY:
LEVY:
RATE OF LEVY:
VOTE TO INCREASE TAX LEVY:

The 24-cent tax rate increase approved by the voters of the Special School District of St. Louis County in November 2000 should be added to the tax rate ceiling that was applicable for the date of that election to determine the District's new tax rate ceiling pursuant to Section 137.073.5(2), RSMo. Assuming that Section 137.073 had been properly applied to determine the District's tax rate ceiling to that point in time, the new tax rate ceiling calculated in that fashion would also be the District's new maximum levy permitted by Article X, Section 22(a) of the Missouri Constitution.

OPINION NO. 107-2003

November 6, 2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have asked our office for an opinion concerning the determination of the largest property tax rate that may be charged by the Special School District of St. Louis County. Your opinion request states that in the November 2000 election, the voters of the Special School District voted to add 24 cents to the District's operating levy, but the ballot measure approved by the voters did not specify what the resulting tax rate would be. You state that your office and the District disagree over the baseline to which the 24-cent increase should be added.

The disagreement focuses on the interpretation of Section 137.073.5(2), RSMo 2000,[1] which states:

> When voters approve an increase in the tax rate, the amount of the increase shall be *added to the tax rate ceiling as calculated pursuant to this section* to the extent the total rate does not exceed any maximum rate prescribed by law. If a ballot question presents a stated tax rate for approval rather than describing the amount of increase in the question, the stated tax rate approved shall be the current tax rate ceiling. The increased tax rate ceiling as approved may be applied to the total assessed valuation of the political subdivision at the setting of the next tax rate.

(Emphasis added.)

A political subdivision's "tax rate ceiling" is subject to revision in the summer of each year based on changes in property assessments, which are reported to political subdivisions by May 31 of each year. Thus, the issue presented by your opinion request can be stated as follows: Should the Special School District add 24 cents to the tax rate ceiling that was applicable at the time of the November 2000 election? Or should the District wait until the summer of 2001, calculate a new tax rate ceiling based on changes in assessments that have been reported to it, and then add 24 cents to that newly calculated tax rate ceiling?

Although your request focuses on the disagreement concerning interpretation of Section 137.073.5(2) and its effect on the Special School District's "tax rate ceiling," the maximum levy that a political subdivision may charge is also limited by Article X, Section 22(a) of the Missouri Constitution, which is part of the so-called Hancock

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[1]Section 137.073 was amended by Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bills 1150, 1237 and 1327, 91st General Assembly, Second Regular Session (2002), but the events addressed in this opinion occurred before that amendment, so statutory citations are to RSMo 2000 unless otherwise indicated. Nonetheless, that legislation did not change the language of Section 137.073.5(2) and thus would not change this opinion.

Amendment. Accordingly, your request also requires interpretation of Article X, Section 22(a).[2]

Background

Section 137.073 establishes the process and calculations for determining each political subdivision's "tax rate ceiling." Section 137.073 is designed to prevent windfalls to taxing authorities that would otherwise occur simply because of increases in assessed valuations. *See Asarco, Inc. v. McHenry*, 679 S.W.2d 863, 864 (Mo. banc 1984). The calculations established by Section 137.073 are detailed, but generally they require a political subdivision to reduce a tax rate in a year where assessed valuation of existing property increases at a pace greater than the general rate of inflation. *See* Section 137.073.2. The statute thereby protects taxpayers from increases in the amount of taxes they otherwise would pay if they were charged the same, preexisting tax rate on property that is now assessed at a greater value. *See Asarco, Inc.*, 679 S.W.2d at 864.

The process for revising a political subdivision's tax rate ceiling falls into the annual sequence of events involved in assessment and levy of property taxes. Of interest here, the county assessor presents the assessment books to the county's governing body by May 31 of each year. Section 137.245. The county clerk then notifies each political subdivision in the county of changes in valuation of various categories of property and political subdivisions revise their tax rates according to the calculations of Section 137.073. Political subdivisions then fix their tax rates and those rates are entered in the tax books--for counties by September 20 (Section 137.055.1) and for other political subdivisions by September 1 (Section 67.110.1). Tax bills for the year are sent thereafter.

A political subdivision's tax rate ceiling may be increased by voters. *See* Section 137.073.1(3) (tax rate ceiling "is the maximum tax rate that may be levied, unless a higher tax rate ceiling is approved by voters . . . as provided in this section"). Section 137.073.5(2), addresses how a voter-approved tax increase affects the tax rate ceiling.

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[2]Your request specifically asks whether "the maximum authorized tax levy for the Special School District of St. Louis County [should] be set at $.8380 or $.8645." Because we are not in a position to verify the data and calculations yielding specific monetary amounts for the tax rate, we do not address this detail of your request. Instead, we focus our opinion on the questions of law concerning the interpretation of Section 137.073 and Article X, Section 22(a) that are raised by the scenario you have described.

Analysis of Section 137.073.5(2)

The goal of statutory interpretation is to ascertain the intent of the legislature from the language used and to give effect to that intent, if possible, and to consider the words used in their plain and ordinary meaning. *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. banc 1995). The meaning of a word depends to some extent on its context. *Id.* Thus, where terms may have several shades of meaning in their ordinary usage, it is appropriate to examine the context of a statute to identify the particular meaning intended by the legislature. *See J.B. Vending Co., Inc. v. Dir. of Revenue*, 54 S.W.3d 183, 187 (Mo. banc 2001). Applying these and other principles of statutory interpretation, it is apparent that the voter-approved tax increase should be added to the tax rate ceiling that was applicable for the date of the election.

First, the introductory clause of Section 137.073.5(2) states that the voter-approved increase shall be added to the tax rate ceiling as calculated pursuant to that section "*[w]hen* voters approve an increase in the tax rate." Section 137.073.5(2) (emphasis added). The term "when" means "at or during the time that." Webster's Third New International Dictionary 2602 (1993). This indicates that, in determining the new tax rate ceiling resulting from a voter-approved tax increase, the increased amount is added to the tax rate that applied "at . . . the time" of voter approval, not at some later time when new assessments make it possible to revise the rate that applied on election day.[3]

Second, the final sentence of Section 137.073.5(2) provides: "The increased tax rate ceiling as approved may be applied to the total assessed valuation of the political subdivision at the setting of the next tax rate." Again, this language provides context showing that the

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[3]The term "when" does not always indicate a particular time, but instead can be synonymous with the term "if." *Id.* But that interpretation is not supported by context in Section 137.073.5(2). In the second sentence of that provision, the legislature stated how the new tax rate ceiling should be determined, "*[i]f* a ballot question presents a stated tax rate for approval." Section 137.073.5(2) (emphasis added). "The legislature is presumed to have intended each word in a statute to have meaning, . . ." *State v. Duggar*, 806 S.W.2d 407, 409 (Mo. banc 1991). Thus, when it "expressly employ[s]" different words in addressing related subjects, "the legislature is presumed to have intended a distinction." *Id.* Here, where the legislature used the terms "when" and "if" in back-to-back sentences, it should be understood to have intended the term "when" to indicate a particular time, not to be synonymous with the term "if."

voter-approved increase should be added to the tax rate ceiling applicable on election day. The sentence indicates that the new tax rate ceiling is an amount "approved" by the voters and "applied . . . at the setting of the next tax rate," rather than an indefinite amount that must await new assessments and the setting of the next tax rate for determination.

Third, the language in question arises in the context of a statute focused on voter control of tax rates. It would be inconsistent with that context for Section 137.073.5(2) to be interpreted so that voters going to the polls in November 2000 would not know the baseline to which a 24-cent increase would be added, but instead would have to wait until new assessments arrived in the summer of 2001 and further calculations were performed to know what new tax rate ceiling they had approved.

Finally, the provision of Section 137.073.5(2) requiring a voter-approved tax increase to be added "to the tax rate ceiling as calculated pursuant to this section" is consistent with this interpretation. Assuming that the provisions of Section 137.073 had been followed in 2000, the tax rate ceiling applicable for the date of the November 2000 election was in fact "the tax rate ceiling as calculated pursuant to" Section 137.073. Instead of indicating a need to wait for the next year's assessments and calculations, that language simply indicates that the voter-approved increase is to be added to the tax rate ceiling as previously revised pursuant to Section 137.073, instead of being added to an unrevised rate adopted at some point in the past. In that regard, your opinion request indicates that the ballot language put to the Special School District's voters in November 2000 asked whether 24 cents should be added to "the operating levy established in 1986." Thus, in this case, the language of Section 137.073.5(2) makes clear that the ballot must not be understood to refer to the amount of the levy rate as it was established in 1986, but instead to the amount of that rate as it stood in 2000, after it had been revised through the years pursuant to Section 137.073.

Accordingly, the 24-cent increase approved by the voters of the Special School District in November 2000 should be added to the tax rate ceiling that was applicable for the date of that election. That new tax rate ceiling would be applied to the assessed valuation of the Special School District at the setting of the next tax rate in 2001. The new tax rate ceiling would then be subject to revision in future years pursuant to Section 137.073.

Interpretation of Article X, Section 22(a)

Article X, Section 22(a) of the Missouri Constitution provides:

> Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

Article X, Section 22(a) limits the amount of levy that a political subdivision may charge, but it plainly permits a levy to be increased by "the approval of the required majority of the qualified voters of that . . . political subdivision voting thereon." Accordingly, the new maximum levy rate permitted under the provisions of Article X, Section 22(a) should be the amount of the levy rate approved by voters.

The question is how to determine what levy rate voters should be considered to have approved for purposes of Article X, Section 22(a) in a circumstance where they have voted on ballot language that proposes an addition to an existing levy but does not specify what the resulting levy would be. Article X, Section 22(a) is silent on that matter, but Section 137.073.5(2) establishes by law what rate of levy voters are considered to have approved in such circumstances. Article X, Section 24(b) provides that "the general assembly may enact laws implementing [Article X, Sections 16-23] which are not inconsistent with the purposes of said sections." Accordingly, when voters approve a tax increase without specifying what the resulting rate will be, the new tax rate ceiling determined pursuant to Section

137.073.5(2)--as interpreted above--should also be the new maximum levy rate permitted by Article X, Section 22(a), unless there is something about the determination provided by Section 137.073.5(2) that would allow for a rate higher than what would be permitted by Article X, Section 22(a).

Section 137.037 is structured to avoid such an occurrence. Section 137.073 and Article X, Section 22 are worded somewhat differently, so there is potential for the tax rate ceiling established pursuant to Section 137.073 to be subject to different adjustments and thus to differ from the maximum levy permitted by Article X, Section 22 over time. *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278, 285-86 (Mo. banc 2000). But, as the Missouri Supreme Court has stated, political subdivisions:

> [A]re required to utilize the lowest tax rate ceiling as the highest lawful levy in the district. Under the legislative scheme, computing a separate tax rate ceiling pursuant to section 137.073, RSMo, will not violate the terms of article X, section 22(a) because the section 137.073, RSMo, tax rate ceiling will be used only if it is lower than that required by article X, section 22.

Id. Thus, when properly applied, Section 137.073 cannot produce a tax rate ceiling that exceeds the maximum rate permitted by Article X, Section 22.

As explained above, pursuant to Section 137.073.5(2) voters of the Special School District added 24 cents to a baseline of the tax rate ceiling applicable for the date of the November 2000 election. Assuming that the provisions of Section 137.073 had been properly applied to that point in time, that baseline could not have exceeded the maximum levy rate allowed by Article X, Section 22(a). Accordingly, allowing the rate approved by voters to be determined as provided by law in Section 137.073.5(2) would not be contrary to Article X, Section 22(a).

CONCLUSION

The 24-cent tax rate increase approved by the voters of the Special School District of St. Louis County in November 2000 should be added to the tax rate ceiling that was applicable for the date of that election to determine the District's new tax rate ceiling pursuant to Section 137.073.5(2), RSMo. Assuming that Section 137.073 had been properly applied to determine the District's tax rate ceiling to that point in time, the new tax rate

ceiling calculated in that fashion would also be the District's new maximum levy permitted by Article X, Section 22(a) of the Missouri Constitution.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

June 20, 2003

OPINION LETTER NO. 125-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition to amend Article III of the Missouri Constitution by adding a new section relating to gambling on floating facilities on the White River in Rockaway Beach, Missouri. A copy of the initiative petition that you submitted to this office on June 10, 2003, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

We note that the cover letter references an initiative petition to amend the statutes when the petition is to amend the Missouri Constitution. The initiative petition accurately identifies the proposal as one to amend the Constitution.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the

petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ELECTION LAWS: An election authority may not close records compiling voter registration information described in Section 115.157, RSMo Cum. Supp. 2002, in response to a newspaper's request for such records on the basis that they would be used for "commercial purposes" as that term is used in Section 115.158, RSMo 2000, or Section 115.158 as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Bill No. 511, 92nd General Assembly, First Regular Session (2003), where the newspaper has represented that it will not use the information for commercial purposes but instead will use it for fact-checking. The election authority must provide such records in CD-ROM format if so requested and if it has the capability to do so.

SUNSHINE LAW:

VOTERS:

OPINION NO. 126-2003

November 6, 2003

Honorable Chuck Gross
State Senator, District 23
State Capitol Building, Room 434
Jefferson City, MO 65101

Dear Senator Gross:

You have submitted a request to this office for an opinion in response to the following questions:

> Can the *St. Louis Post-Dispatch* obtain a copy of the voter registration electronic media (CD-ROM) pursuant to their Chapter 610 RSMO request or may the Election Authority refuse under Chapter 115.157, RSMo to provide such CD-ROM or copy and elect to give CD-ROM or paper access only in the office of the Election Authority?
>
> Pursuant to §115.158, should the Election Authority deny such request on the grounds it is for a "commercial purpose" in that the *Post* is not making the request for a story, but to build a database to check facts?

Section 115.157, RSMo Cum. Supp. 2002,[1] governs the dissemination of voter information maintained in electronic format by county election officials. It provides, "Except as provided in

[1]Citations to Section 115.157 are to RSMo Cum. Supp. 2002. Citations to other statutes are to RSMo 2000, unless otherwise indicated.

subsection 2 of this section, all election authorities shall make the information described in this section available pursuant to chapter 610, RSMo. Any election authority who fails to comply with the requirements of this section shall be subject to the provisions of chapter 610, RSMo."[2]

The information described in Section 115.157 consists of:

> [E]lectronic media or printouts showing unique voter identification numbers, voters' names, dates of birth, addresses, townships or wards, and precincts [broken down into specified fields, and] . . . the names, dates of birth and addresses of voters, or any part thereof, within the jurisdiction of the election authority who voted in any specific election, including primary elections, by township, ward or precinct, provided that nothing in this chapter shall require such voter information to be released to the public over the Internet.

Section 115.158 provides for the creation of a central voter registration database housed in the Secretary of State's Office, and provides that the information contained therein is public information, with the following limitation:

> Any information contained in any state or local voter registration system, limited to the master voter registration list or any other list generated from the information, subject to chapter 610, RSMo, shall not be used for commercial purposes; provided, however, that the information can be used for elections, for candidates, or for ballot measures, furnished at a reasonable fee. Violation of this section shall be a class B misdemeanor.

Both Section 115.157 and Section 115.158 refer to Chapter 610, which is commonly referred to as the Sunshine Law. The Sunshine Law provides, "Except as otherwise provided by law, . . . all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, ..." Section 610.011.2.

In interpreting statutes, we ascertain the legislature's intent by considering the plain and ordinary meaning of the words in the statute. *Cox v. Dir. of Revenue*, 98 S.W.3d 548, 550 (Mo. banc 2003). By their plain terms, the statutes noted above demonstrate the legislature's intent that the information described in Section 115.157 is to be made available to the public unless a provision of

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[2]Subsection 2 limits the dissemination of information in circumstances where a court has issued an order closing certain information in the registration record of an undercover law enforcement officer, a person in a witness protection program, or a victim of domestic violence. Section 115.157.2.

law otherwise provides for that information to be closed. As discussed below, we find no provision that would allow for such closure.

In this vein, the Sunshine Law states: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy." Section 610.011. In this context, the limitation on use of electronically maintained voter registration information for commercial purposes contained in Section 115.158 is an "exception" to the general rule that governmental records are open to the public, and as such it must be construed strictly.

We have reviewed a copy of the *Post-Dispatch's* written request for the voter registration database. It represents that neither the reporter making the request, nor her employers would use the information for a "commercial purpose." The letter represents that the *Post-Dispatch* intends to use the information "to check spellings on names, and double check ages, for example. The data would not be used for advertising purposes or solicitation."

Neither the facts presented in your opinion request, nor the *Post-Dispatch's* letter requesting the voter registration records indicate that the request is for information other than that described in Section 115.157 (*e.g.*, registrants' Social Security numbers; information closed by court order in accordance with Section 115.157.2). Section 115.157, therefore, contains no justification for failing to provide the requested records. Similarly, there are no provisions in the Sunshine Law that would justify closure of those records. *See* Section 610.021. The only remaining question, therefore, is whether the Election Authority may deny a request for voter registration data based upon his conclusion that fact checking by a news gathering organization is a "commercial purpose."

While there is no dispute that the *Post-Dispatch* is a for-profit enterprise, the courts frequently distinguish editorial functions from commercial functions. *See, e.g., Litzinger v. Pulitzer Publ'g Co.*, 356 S.W.2d 81 (Mo. 1962) (corporate newspaper publisher was not considered to be transacting its "usual and customary business" for purposes of venue statute in a county in which it maintained an office and a reporter). *Cf. Doe v. TCI Cablevision*, No. 84856, slip op., (Mo. banc July 29, 2003) (use of a person's identity in news, entertainment, and creative works enjoy a higher level of protection under the first amendment than use for commercial purposes, such as advertising goods or services).

The penalties for violation of Sections 115.157 and 115.158 are instructive as well. The statutes do not penalize the election authority for disseminating information improperly, nor do they provide for an appeal of an adverse decision by an election authority. Instead, Section 115.158 provides for a criminal penalty for those who actually use the information improperly, and under the terms of Section 115.157, the election authority is subject to the penalties provided for in

Chapter 610. The only penalty created by Chapter 610 is a penalty for *failing* to make public records available.

Based on these considerations, we do not believe there is a basis for declining to provide the records requested by the *Post-Dispatch* in the circumstances identified in your opinion request.

Subsequent to your request, the Governor signed Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Bill No. 511, 92nd General Assembly, First Regular Session (2003). House Bill 511, which took effect August 28, 2003, amends both Sections 115.157 and 115.158, and provides new legislative guidance for the interpretation of the term "commercial purposes." The new language in Section 115.158 reads in relevant part as follows:

> For purposes of this section, "commercial purposes" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record.

House Bill 511.

Our opinion does not change under this new language. The *Post-Dispatch* has made a specific representation that it will not use voter registration data for "solicitation," and we believe that any theory that the *Post* will enjoy even an indirect monetary gain from increased circulation based on better fact-checking through the use of the data is speculative at best. Particularly in light of the requirement that exceptions to the Sunshine Law's policy of openness be strictly construed to promote openness, we do not understand the phrase "commercial purposes" to include "fact checking" of the editorial content of a newspaper.

Your request also appears to focus on whether an election authority may elect to provide access to the information described in Section 115.157 only in its offices and thus decline to provide a copy of such information to the *Post-Dispatch* in CD-ROM format. We addressed a substantially identical issue in Opinion No. 153-1998, Fisher, where we concluded that a county was required to provide records in microfilm format where it had the capability to do so. Consistent with that opinion, we conclude that the election authority is required to provide the records in CD-ROM format if it is requested to do so and has the capability to do so.

CONCLUSION

It is the opinion of this office that an election authority may not close records compiling voter registration information described in Section 115.157, RSMo Cum. Supp. 2002, in response to a newspaper's request for such records on the basis that they would be used for "commercial purposes" as that term is used in Section 115.158, RSMo 2000, or Section 115.158 as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Bill No. 511, 92nd General Assembly, First Regular Session (2003), where the newspaper has represented that it will not use the information for commercial purposes but instead will use it for fact-checking. The election authority must provide such records in CD-ROM format if so requested and if it has the capability to do so.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

July 10, 2003

OPINION LETTER NO. 127-2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated June 30, 2003, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal relating to a constitutional amendment for floating gambling facilities on the White River in Rockaway Beach, Missouri. The fiscal note summary which you submitted is as follows:

> This constitutional amendment will generate annual direct gaming revenue ranging from $39.9 to $49.0 million for the state and $10.2 to $12.4 million for the local government, subject to local voter approval and licensing by the State Gaming Commission. The amount of indirect revenue or expense, if any, is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

July 11, 2003

OPINION LETTER NO. 128-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

On July 3, 2003, you submitted to us a summary statement for the petition submitted by Polsinelli, Shalton and Welte representing Missourians for Economic Opportunity, Inc. relating to gambling on floating facilities on the White River in Rockaway Beach, Missouri. The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

> Shall the Missouri Constitution be amended to authorize floating gambling facilities on or adjacent to the White River in Rockaway Beach, Missouri, to be licensed and regulated consistent with all other floating facilities in the State of Missouri, with fifty percent of the state revenues generated in the current year to be used for uniform salary supplement grants to all high quality teachers employed in priority schools, and the remaining state revenues generated in the current year to be distributed to all priority school districts on a per pupil basis for capital improvements to education facilities?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

WORKERS' COMPENSATION: Missouri law does not prohibit an employer from agreeing to allow its employees who sustain occupational injuries or illnesses from selecting physicians of their own choice or from agreement to pay for such physicians.

OPINION NO. 132-2003

November 6, 2003

Honorable Dan Bishop
Representative, District 38
State Capitol Building, Room 109-G
Jefferson City, MO 65101

Dear Representative Bishop:

You have submitted the following question to this office:

> Is a provision in a private sector collective bargaining agreement which provides that an employee who sustains an occupational injury or illness shall be allowed to select a physician of their own choice, prohibited by or violative of Chapter 287 of the Revised Statutes of Missouri or any other Missouri law?

Section 287.140.1, RSMo 2000, governs the selection of physicians in workers' compensation cases. It provides:

> In addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. *If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.*

(Emphasis added.)

The first rule of statutory construction is to implement the intent of the legislature. *State v. Burnau*, 642 S.W.2d 621, 623 (Mo. banc 1982). In such construction, words are to be given their plain and ordinary meaning. *Hovis v. Daves*, 14 S.W.3d 593, 595 (Mo. banc 2000). The statute expressly allows employees to select physicians at their own expense. Accordingly, there is nothing in the language of the statute or Missouri case law that prohibits an employee from choosing his or her own physician. There is also nothing in the statute that prohibits an employer from agreeing to allow its employees to choose their own physicians, or from agreeing to pay for physicians chosen by employees. Although the statute does not require an employer to pay for a physician chosen by its employee, nothing in its terms prohibits an employer from undertaking the obligation, by agreement, to pay for such a physician. Likewise, the subject matter and context of the statute do not suggest any intent to prohibit an employer from taking on the additional obligation of paying for physicians chosen by its employees. *See Estate of Welch*, 797 S.W.2d 742, 745-46 (Mo. App. W.D. 1990) (statute did not prohibit or void contract where statute's language and subject matter demonstrated that legislature did not intend such result).

CONCLUSION

Missouri law does not prohibit an employer from agreeing to allow its employees who sustain occupational injuries or illnesses from selecting physicians of their own choice or from agreeing to pay for such physicians.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

DEPARTMENT OF ECONOMIC DEVELOPMENT:
MISSOURI DEVELOPMENT FINANCE BOARD:
MISSOURI DOWNTOWN AND
RURAL ECONOMIC STIMULUS ACT:
TAX INCREMENT FINANCING:

The provision of the Missouri Downtown and Rural Economic Stimulus Act ("MODRESA") to be codified at Section 99.960.8, RSMo, does not preclude a project that has been designated as a redevelopment project under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 *et seq.*, RSMo 2000 ("the TIF statute"), and is receiving funding through "payments in lieu of taxes" and "economic activity taxes" under that statute, from subsequently being approved for state supplemental downtown development financing under MODRESA. Whether another provision of MODRESA would preclude such a combination of financing would depend on the circumstances.

OPINION NO. 136-2003

November 6, 2003

Honorable Yvonne S. Wilson
Representative, District 42
State Capitol, Room 115-B
201 West Capitol Avenue
Jefferson City, MO 65101-6806

Dear Representative Wilson:

You have submitted the following question to our office:

> If a project (a) has previously been approved as a "redevelopment project" under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 *et seq.*, RSMo ("TIF"), and (b) is receiving funding through "PILOTs" and "EATs" under TIF (but not "new state revenues" under TIF), does Section 99.960.8, RSMo, or any other provision of the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 *et seq.*, RSMo ("MODESA"), preclude that project from subsequently being approved as a "development project" under a MODESA "development plan" and receiving funding under the MODESA development plan through only the

> "state sales tax increment" and/or the "state income tax increment" under MODESA while still continuing to receive funding through "PILOTs" and "EATs" under TIF?

The Missouri Downtown and Rural Economic Stimulus Act ("MODRESA") was enacted by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 289, 92nd General Assembly, First Regular Session (2003). That legislation provides for MODRESA to be codified at Sections 99.915 to 99.1060, RSMo.[1]

MODRESA is a complex and detailed law and we will not undertake to summarize it fully in this opinion. For purposes of this opinion, it suffices to note the following. The legislation authorizes a municipality to establish development financing to aid certain development projects. *See* Sections 99.918, 99.954, and 99.957. The legislation in essence allows certain new local sales, earnings, and property tax revenues created by a development project to be placed in a special fund and used to finance certain public infrastructure and related costs in aid of the project. *Id.* In addition, the statute authorizes a portion of state income and sales tax revenues created by the development project--the "state sales tax increment" and "state income tax increment"--to be placed into the State Supplemental Downtown Development Fund, which is also created by MODRESA. *See* Sections 99.918 and 99.963. A municipality may apply to the Department of Economic Development for a disbursement from the State Supplemental Downtown Development Fund to pay for certain costs of a development project. Section 99.960. The legislation establishes a process in which the Department of Economic Development provides an analysis and recommendation to the Missouri Development Finance Board, which in turn makes a determination regarding the application for a disbursement from the Fund. *Id.* Such disbursements are referred to in MODRESA as "state supplemental downtown development financing." *Id.*

Your opinion request addresses the relationship between state supplemental downtown development financing and financial assistance under another state statute, the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, RSMo 2000. That statute--often referred to as the tax increment financing ("TIF") statute--is also complex. It suffices here to note that it authorizes municipalities to take steps leading to so-called tax increment financing for certain redevelopment projects. That financing is accomplished

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[1]We identify the provisions of MODRESA by reference to the sections of the Missouri Revised Statutes in which the legislation indicates they are to be codified.

using mechanisms referred to in the statute as "payments in lieu of taxes" ("PILOTs") and "economic activity taxes" ("EATs"). *See* Sections 99.805(4) and (10) and 99.845, RSMo 2000.

You specifically ask about the effect of Section 99.960.8, which provides:

> A development project approved for state supplemental downtown development financing may not *thereafter elect* to receive tax increment financing pursuant to the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, and continue to receive state supplemental downtown development financing pursuant to sections 99.915 to 99.980.

(Emphasis added.) By its terms, this provision would force a development project to forgo state supplemental downtown development financing if it first received approval for that financing and then subsequently elected to receive tax increment financing pursuant to the TIF statute. But your opinion request assumes the opposite sequence of events: you ask what happens with respect to a project that first receives financing pursuant to the TIF statute, then subsequently receives approval for state supplemental downtown development financing under MODRESA. Section 99.960.8 does not apply to the circumstance identified in your request.

In interpreting a statute, Missouri courts look first to the plain and ordinary meaning of the words enacted by the General Assembly. *Cox v. Dir. of Revenue*, 98 S.W.3d 548, 550 (Mo. banc 2003). In Section 99.960.8, the legislature provided that a development project approved for state supplemental financing downtown development under MODRESA may not "thereafter elect" to receive financing under the TIF statute and continue to receive the state MODRESA financing. The word "thereafter" means "after that." Webster's Third New International Dictionary 2372 (7th ed. 1993). The word "elect" means "to make a selection of: CHOOSE." *Id.* 731. Accordingly, Section 99.960.8 establishes that *after* a development project is approved for state supplemental downtown development financing, that project may not choose to receive financing under the TIF statute and keep its state MODRESA financing. But the terms chosen by the General Assembly do not apply in a situation where a project is receiving financing under the TIF statute *before* it has been approved for state supplemental downtown development financing.

It bears noting, though, that Section 99.960.8 does not ensure that state supplemental downtown development financing will be available if a project has first obtained financing

under the TIF statute. Instead, Section 99.960.8 is simply silent on whether state supplemental downtown development financing would be available in that circumstance.

In that vein, you also asked whether any other provision of MODRESA would preclude a project that is already receiving financing pursuant to the TIF statute through PILOTs and EATs from later obtaining state supplemental downtown development financing and keeping its TIF funding. There are several provisions of MODRESA that may ultimately preclude such a combination of financing. For example, one prerequisite for obtaining state supplemental downtown development financing for a development project is "that the development area would not be reasonably anticipated to be developed without the appropriation of" the state sales and/or income tax revenues created by the project. Section 99.960.1(5). *See also* Section 99.918(19). Thus, to the extent that the receipt of financing pursuant to the TIF statute through PILOTs and EATs connotes that the development area in question is already being developed without state supplemental downtown development financing, Section 99.960.1(5) could preclude such financing.

Further, Section 99.954.7 provides:

> State supplemental downtown development financing shall not be used for retiring or refinancing debt or obligations on a previously publicly financed redevelopment project without express approval from the director of the department of economic development and the Missouri development finance board. No approval shall be granted unless the application for state supplemental downtown development financing contains development projects that are new projects which were not a part of the development projects for which there is existing public debt or obligations.

This provision, too, could preclude a combination of state supplemental downtown development financing and financing through the TIF statute in certain circumstances.

More broadly, Section 99.960.3 provides that state supplemental downtown development financing is available only if approved by the Missouri Development Finance Board. So Section 99.960.3 would preclude such financing if the Missouri Development Finance Board determined that the statutory provisions noted above or other provisions of MODRESA precluded state supplemental downtown development financing, or if that Board

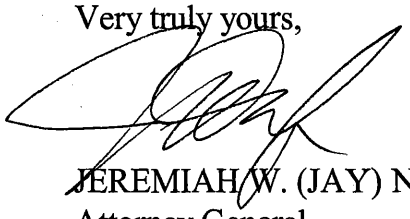
otherwise determined that the combination of state supplemental downtown development financing and TIF funding was not appropriate.

In sum, it would depend on the circumstances whether provisions of MODRESA other than Section 99.960.8 would preclude a project that is already receiving financing pursuant to the TIF statute through PILOTs and EATs from later obtaining state supplemental downtown development financing and keeping its funding through TIF. Accordingly, your question cannot be answered in the abstract.

CONCLUSION

The provision of the Missouri Downtown and Rural Economic Stimulus Act ("MODRESA") to be codified at Section 99.960.8, RSMo, does not preclude a project that has been designated as a redevelopment project under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 *et seq.*, RSMo 2000 ("the TIF statute"), and is receiving funding through "payments in lieu of taxes" and "economic activity taxes" under that statute, from subsequently being approved for state supplemental downtown development financing under MODRESA. Whether another provision of MODRESA would preclude such a combination of financing would depend on the circumstances.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

SUNSHINE LAW: (1) A citizen's advisory committee established by a city to make recommendations concerning city policy, such as a city's municipal land use plan, is a public governmental body and, therefore, must keep a journal or minutes of its meetings, keep a record of its votes, and make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed. (2) If a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "public record" within the meaning of the Sunshine Law. (3) If the original of such a record is given to a consultant and a copy is not kept, it remains a public record, with the consultant holding the record as the public governmental body's agent; the body's custodian of records is responsible for retrieving the record in response to a request for public access to it.

OPINION NO. 143-2003

November 6, 2003

Honorable John Loudon
State Senator, District 7
State Capitol, Room 332
Jefferson City, MO 65101

Dear Senator Loudon:

You have requested an opinion on issues pertaining to Chapter 610, RSMo 2000,[1] commonly referred to as the Sunshine Law. Specifically, you ask:

> 1) Is a Citizen Advisory Committee obligated to maintain records of its public meeting minutes, deliberations and votes on policy recommendations (eg. Recommendations for a municipal Comprehensive Land Plan)?
>
> 2) If, alternately, policy recommendations are privately made by, for example, the Committee Chair and/or city staff, and then communicated to a private (land planning) consultant, are those

[1]All references are to RSMo 2000 unless otherwise specified.

> communications public records (as opposed to private correspondence)?
>
> 3) If such communications are forwarded to a consultant in any form (such as a marked-up plan draft), and the City states they did not retain a copy of the same, can the City refuse to retrieve a copy to provide upon request for any interested party?
>
> 4) If a citizen then appeals to the consultant to provide such communications directly, is it acceptable that the City instruct the consultant that they are not authorized to spend time and/or money meeting such a request? (Ie. Does it violate the spirit and intent of the Sunshine Law?)

The Sunshine Law expresses the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies are open to the public. *See* Section 610.011. It requires each "public governmental body" to comply with various specific rules to achieve that policy, including keeping a journal or minutes of its meetings and records of its votes. *See, e.g.,* Section 610.020.6.

To answer your first question--whether a citizen's advisory committee is required to keep records of its meetings, deliberations, and votes--we must determine whether such a committee is a "public governmental body," and thus subject to the Sunshine Law's requirements. Based on the material submitted with your opinion request, we assume that you are referring to an advisory committee established by a city to make recommendations concerning city policy, particularly a city's municipal land use plan.

Section 610.010(4) defines the term "public governmental body" as:

> [A]ny legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:
>
> . . . .

> (c) Any department or division of the state, of any political subdivision of the state, of any county or of any municipal government, school district or special purpose district including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision;
>
> . . . .
>
> (e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds . . . .

In interpreting statutes, we look first to the plain and ordinary meaning of the words enacted by the General Assembly. *Cox v. Dir. of Revenue*, 98 S.W.3d 548, 550 (Mo. banc 2003). In addition, when interpreting the Sunshine Law, we are required to construe its provisions broadly to favor our state's public policy of openness. Section 610.011.1. Here, the terms of Section 610.010(4) are easily broad enough to encompass an advisory committee established to make recommendations concerning land use policy.

Accordingly, a citizen's advisory committee appointed by a city to make recommendations about the city's land use plan is a "public governmental body" within the meaning of the Sunshine Law. As a result, such a citizen's advisory committee is required to keep a journal or minutes of its meetings, as well as a record of its votes. Section 610.020.6. Such a committee must also make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed. Section 610.011.

The requirement to make public records open is also important in answering your second question, in which you refer to policy recommendations "privately made" to a land use consultant by the chair of the advisory committee or by city staff. You ask whether such communications are public records.

Section 610.010(6) defines the term "public record" in pertinent part as:

> [A]ny record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; . . .

As noted above, a citizen's advisory committee of the type envisioned in your opinion request is a public governmental body. Based on your second question , we assume that you are referring to a situation in which a private consultant has been retained to work with or alongside the committee. We further assume you are referring to a situation in which a member of such a committee or a city staff person working with the committee communicates with the consultant about policy recommendations within the scope of the committee's land use planning work.

Under Section 610.010(6), if a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "record . . . of a public governmental body" and thus is a "public record." The fact that a communication may have been developed or transmitted by an individual, instead of by the committee as a whole, does not place it outside the scope of the definition of "public record." *Accord* Missouri Attorney General's Opinion Letter No. 192, Skaggs, 1994 (telephone records of individual member of house of representative are public records). Public governmental bodies such as committees are made up of individuals and must operate through the actions of individuals. If the term public record were construed to include only records made by a multi-member body as a whole and thus to exclude records generated by individual members of a body, there would be ample opportunity for records of important policy actions and deliberations to be hidden from public view. That would be at odds with the General Assembly's mandate that the Sunshine Law be construed to favor openness. *See* Section 610.011.1.

Your third question addresses a situation in which a member of the citizen's advisory committee or a city staffer communicates a policy recommendation to the consultant--we presume in some recorded form, such as a marked-up draft of a land use plan--but the committee and city do not keep a copy of that record. Specifically, you ask whether the city (and presumably the committee) can refuse to retrieve a copy of the record from the consultant if a request is made for that record.

As discussed above, the record of such a communication is a "record . . . of a public governmental body" and, therefore, is a "public record." Placing the original of the record in the hands of a private consultant does not change the fact that it is a "record . . . of a public governmental body" and thus does not place it beyond the public's reach. Interpreting the statute to allow a public governmental body to put records beyond the public's view by giving originals away to agents and not keeping copies would be inconsistent with the requirement to construe the Sunshine Law to favor openness. *See* Section 610.011.1.

Thus, a record of the type you describe remains a public record, with the consultant holding the record as the public governmental body's agent. Pursuant to Section 610.023, the body's custodian of records remains responsible for maintenance of the record and for retrieving the record if necessary to provide public access to it.[2]

This interpretation does not contradict the provisions of Section 610.010(6) concerning consultants. As indicated above, Section 610.010(6) defines the term "public record" as "*including* any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds." (Emphasis added.) As the use of the word "including" indicates, this language is not exclusive. Therefore, it does not specify the only circumstances in which a record held by a consultant might be a public record. As the discussion above demonstrates, a consultant may also hold a public record as an agent for a public governmental body or otherwise come into possession of a public record.

Because of our answer to your third question, it is unnecessary to answer whether a the city can instruct the consultant not to search for such a communication if contacted by someone wanting to review it. Under our interpretation, an individual wanting to obtain a copy of the record would not need to seek it from the consultant, but instead could submit a request to the public governmental body's custodian of records. *See* Section 610.023. In responding to such a request, the custodian could charge the actual cost of search and duplication. Section 610.026(1).

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[2]Even if a public record came into the possession of a private person who is not an agent of the public governmental body, Missouri law gives the custodian of records tools to retrieve the record for the purpose of providing public access to it. *See* Section 109.080 ("If any private person shall have or obtain possession of any books, records or papers, appertaining to any public office, he shall deliver them to the officer entitled to the same.").

CONCLUSION

(1) A citizen's advisory committee established by a city to make recommendations concerning city policy, such as a city's municipal land use plan, is a public governmental body and, therefore, must keep a journal or minutes of its meetings, keep a record of its votes, and make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed.

(2) If a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "public record" within the meaning of the Sunshine Law.

(3) If the original of such a record is given to a consultant and a copy is not kept, it remains a public record, with the consultant holding the record as the public governmental body's agent; the body's custodian of records is responsible for retrieving the record in response to a request for public access to it.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CANDIDACY FILING:
ELECTION DISTRICTS:

The exception in Section 115.127.5, RSMo. Supp. 2003, requiring a special district or political subdivision "located" in a home rule city with more than four hundred thousand inhabitants to have an opening filing date of the fifteenth day before an election applies to any special district or political subdivision, including a school district, which has any part of its boundaries within the city limits of Kansas City, Missouri.

OPINION NO. 148-2003

December 11, 2003

Honorable Matt Bartle
State Senator, District 8
State Capitol Building, Room 434
Jefferson City, MO 65101

Dear Senator Bartle:

You have requested an opinion on the interpretation of Section 115.127.5, RSMo. Supp. 2003. Specifically, you ask:

> Does 115.127.5 RSMo establish an opening date for filing the 15th Tuesday prior to the election for all political subdivisions and special districts having any portion of their territory lying within the city limits of Kansas City?

Your request indicates that this question is of special interest to school districts. We assume your question applies only to districts which do not provide an opening date by law or charter, as Section 115.127.5 allows a different opening date to be set by law or charter.

Section 115.127.5 was amended in 2003 to change the opening date for filing a declaration of candidacy from the fifteenth Tuesday prior to the election to the sixteenth Tuesday prior to the election. *See* Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Bill 511, 92nd General Assembly, First Regular Session (2003) ("HB 511"). However, an exception exists for a "home rule city with more than four hundred thousand inhabitants and located in more than one county and any political subdivision or special district located in such city[.]" *See* Section 115.127.5, RSMo Supp. 2003; HB 511. This exception, which applies to Kansas City,[1] establishes an opening date of the fifteenth Tuesday before the election. Therefore, unless otherwise provided by law or charter, districts located in Kansas City have an opening date of the fifteenth Tuesday prior to the election.

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[1]*See* Official Manual, State of Missouri, 2003-2004 at 843.

School districts are included in the definition of "special district" in Section 115.013(26), RSMo Supp. 2002. Therefore, the only question is whether a special district or political subdivision with boundaries located both inside and outside of the Kansas City city limits is "located in such city" within the meaning of Section 115.127.5, RSMo Supp. 2003.

The main purpose in interpreting a statute is to determine--and carry out--the intent of the legislature. *State ex rel. Riordan v. Dierker*, 956 S.W.2d 258, 260 (Mo. banc 1997). In the absence of a statutory definition, we assign words their plain and ordinary meanings. *Id.* When the legislature's intent cannot be determined by giving statutory terms their ordinary meaning, we apply rules of construction. *Bosworth v. Sewell*, 918 S.W.2d 773, 777 (Mo. banc 1996). In determining whether to apply a word's plain meaning, we "construe a statute in light of the purposes the legislature intended to accomplish and the evils it intended to cure." *Appleby v. Dir. of Revenue*, 851 S.W.2d 540, 541 (Mo. App. W.D. 1993) (citing *Gannett Outdoor Co. of Kansas City v. Missouri Highway and Transp. Comm'n*, 710 S.W.2d 504, 506 (Mo. App. W.D. 1986)).

To apply these principles to our issue, we first must examine the statutorily defined or ordinary and usual meaning of the relevant terms. "When a word used in a statute is not defined therein, it is appropriate to derive its plain and ordinary meaning from a dictionary." *Preston v. State*, 33 S.W.3d 574, 578 (Mo. App. W.D. 2000) (citing *Am. Healthcare Mgmt., Inc. v. Dir. of Revenue*, 984 S.W. 2d 496, 498 (Mo. banc 1999)). The term "located" is not defined, nor is the term "special district" defined further in Section115.013(8), RSMo Supp. 2002, in a pertinent respect. "Locate" means "to determine or indicate the place of: define the site or limits of." Webster's Third New International Dictionary 1327 (7th ed. 1993). In addition, a "district," by its nature, is characterized by an area within a set of territorial boundaries, not by a particular site. *See* Webster's Third New International Dictionary 660 (7th ed. 1993) (defining "district" as "a territorial division . . . marked off or defined for administrative, electoral, judicial, or other purposes"). Similarly, a political subdivision is defined by the relevant statute in a way that includes an entire legal entity, not merely a particular site. Section 115.013(19), RSMo Supp. 2002 (defining "political subdivision" as "a county, city, town, village, or township of a township organization county").

Applying these meanings, a special district or political subdivision that has part of its boundaries within the city limits of Kansas City is "located" in that city because the limits of the area or territory marked off by its boundaries are defined to be within Kansas City. Thus, such a special district or political subdivision would be subject to the exception requiring an opening filing date of the fifteenth Tuesday before election day.

In addition, there is no indication that applying the term "located" so as either to include or exclude overlapping districts would be unreasonable in these circumstances or would be in conflict with any other provisions of the statute. Indeed, adopting conclusions different from the one we reach here would be problematic. Interpreting the statute to exclude a district or subdivision from the exemption if any part of its boundaries fell outside Kansas City could lead to the anomalous

result of excluding a district that was almost entirely within Kansas City, a result that would seem contrary to the legislature's intent in amending the statute. Interpreting the statute to call for a more nuanced determination of a district's or subdivision's location would raise issues for which there is no legislative guidance, such as determining how much or what parts of a district's or subdivision's territory must fall within Kansas City before it is covered by the exception.

In sum, the legislature wanted to make an exception for Kansas City districts and subdivisions. In doing so, it used language that, by its ordinary meaning encompasses a district or subdivision if it has a portion of its boundaries in Kansas City. Under principles of statutory interpretation, we see no basis to conclude that this was not the legislature's intent.

CONCLUSION

The exception in Section 115.127.5, RSMo. Supp. 2003, requiring a special district or political subdivision "located" in a home rule city with more than four hundred thousand inhabitants to have an opening filing date of the fifteenth day before an election applies to any special district or political subdivision, including a school district, which has any part of its boundaries within the city limits of Kansas City, Missouri.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

OPINION LETTER NO. 151-2003

November 25, 2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to the proposed education and health care protection amendment to the Missouri Constitution (version 1). A copy of the initiative petition that you submitted to this office on November 18, 2003 is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

OPINION LETTER NO. 154-2003

November 25, 2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to the proposed education and health care protection amendment to the Missouri Constitution (version 2). A copy of the initiative petition that you submitted to this office on November 20, 2003 is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 1, 2003

OPINION LETTER NO. 155-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of a statutory initiative petition relating to a proposed education and health care protection act (version 2). A copy of the initiative petition that you submitted to this office on November 26, 2003 is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 9, 2003

OPINION LETTER NO. 157-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

On December 5, 2003, you submitted to us a summary statement for the petition submitted by Doug Burnett relating to the Education and Health Care Protection Amendment (constitutional version #1). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

> Shall the Missouri Constitution be amended to adopt an Education and Health Care Protection Amendment authorizing a temporary sales and use tax, the specific amount determined by the director of revenue not exceeding one cent per dollar, if the commissioner of administration certifies a fiscal emergency (when state revenue falls below adjusted amounts collected in 2001), proceeds to be deposited into an annually-audited trust fund used only for elementary and secondary education and for health care services for those enrolled in the state's Medicaid program, the amendment to be terminated in 2010, unless extended by vote of the people?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with

respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 9, 2003

OPINION LETTER NO. 158-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

On December 5, 2003, you submitted to us a summary statement for the petition submitted by Doug Burnett relating to the Education and Health Care Protection Amendment (constitutional version #2). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

> Shall the Missouri Constitution be amended to adopt an Education and Health Care Protection Amendment authorizing a temporary sales and use tax, the specific amount determined by the director of revenue not exceeding one cent per dollar, if the commissioner of administration certifies a fiscal emergency (when state revenue falls below adjusted amounts collected in 2001), proceeds to be deposited into an annually-audited trust fund used only for elementary and secondary education and for health care services for those enrolled in the state's Medicaid program, the amendment to be terminated in 2010, unless extended by vote of the people?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with

respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 9, 2003

OPINION LETTER NO. 159-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

On December 5, 2003, you submitted to us a summary statement for the petition submitted by Doug Burnett relating to the Education and Health Care Protection Amendment (statutory version #2). The summary statement, prepared pursuant to Section 116.334, RSMo 2000, is as follows:

> Shall Missouri law be amended to enact an Education and Health Care Protection Act increasing sales and use taxes by one cent per dollar in 2005, 2006, and 2007, the proceeds to be deposited into an annually-audited trust fund and used only for elementary and secondary education and for health care services for those enrolled in the state's Medicaid program?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 9, 2003

OPINION LETTER NO. 160-2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated December 8, 2003, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo 2000, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (constitutional version 1). The fiscal note summary which you submitted is as follows:

> This constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated would be dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, RSMo 2000, we reject the legal form of the fiscal note summary on the ground that it contains fifty one words, excluding articles. Section 116.175.3 provides that a fiscal note summary "shall contain no more than fifty words, excluding articles."

Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 9, 2003

OPINION LETTER NO. 161-2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated December 9, 2003, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo 2000, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (constitutional version 1). The fiscal note summary which you submitted is as follows:

> The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated would be dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, RSMo 2000, we approve the legal form and content of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

December 19, 2003

OPINION LETTER NO. 162-2003

The Honorable Matt Blunt
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to the proposed education and health care protection amendment to the Missouri Constitution (version 3). A copy of the initiative petition that you submitted to this office on December 11, 2003, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

December 19, 2003

OPINION LETTER NO. 163-2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated December 11, 2003, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo 2000, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (constitutional version 2). The fiscal note summary which you submitted is as follows:

> The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated is dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, RSMo 2000, we approve the legal form and content of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 8, 2004

OPINION LETTER NO. 167-2003

The Honorable Claire C. McCaskill
Missouri State Auditor
224 State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated December 31, 2003, you have submitted a fiscal note summary prepared pursuant to Section 116.175, RSMo 2000, concerning the initiative petition proposal relating to the Education and Health Care Protection Amendment (constitutional version 3). The fiscal note summary which you submitted is as follows:

> The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated is dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, RSMo 2000, we approve the legal form and content of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General